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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

In re SANTIAGO L., et al., Persons Coming
Under the Juvenile Court Law.

SOCIAL SERVICES AGENCY,

Plaintiff and Respondent.

v.

MASHARIE H.,

Defendant and Appellant.

A095488

(Del Norte County
Super. Ct. No. 016136)

Masharie H. appeals from the juvenile court's orders sustaining a dependency petition and removing her twin sons, Santiago and Miguel L. We affirm the court's orders.

Factual and Procedural History

On April 18, 2001, the Del Norte Department of Health and Social Services (the department) filed a petition on behalf of Santiago and Miguel L., then seven months old, alleging failure to protect, pursuant to Welfare and Institutions Code section 300, subdivision (b).¹ The allegations were summarized as follows in the department's

¹ All further statutory references are to the Welfare and Institutions Code. The father of the twins, who does not live with the family, was also named in the petition. He stipulated to an allegation that he was

jurisdictional hearing report: “The Department’s petition alleges that [Masharie] failed to benefit from a voluntary plan of family maintenance which required the use of appropriate child care providers, transportation to and from appointments by the Department, participating in treatment for her bi-polar disorder² and maintaining a safe and clean home for herself and her children.”

At a contested jurisdictional and dispositional hearing, department social worker Susan Reaves explained that she was referred to Masharie in February 2001, and developed an “unofficial” voluntary case plan for her. At that time, Masharie’s two older children, ages six and seven years old, were also living at home.³

Between February 19 and 22, when Reaves was away, other department personnel assisted Masharie. Social worker Sonia Hurley talked with Masharie about the dirty condition of her house. On a second visit, Hurley observed trash on the kitchen floor, including food that appeared several days old. On that occasion, Hurley was delayed in taking Masharie to an appointment because “it took [Masharie] over 20 minutes to locate her shoes because the house was in such bad shape she could not find her shoes”

On Hurley’s third visit, Masharie was not at home and a teenager, who was temporarily residing at the house, watched the twins. Hurley testified: “[T]he house was very dirty then. The children were dirty. The twin that has the eczema was . . . very bad. His whole face was cracked with the eczema and his hands were, too, and all he had on was a diaper and it was very . . . cold; the house was cold. And I informed the teenager that he was cold; he either needed a blanket or a T-shirt on or something. And so they handed me a blanket off the couch which was an adult-size blanket and it was so extremely filthy I had a hard time touching it but I wanted to wrap the baby up and it smelled. It was one of the worst smells that I remember . . . I’ve been in dirty houses

aware of Masharie’s failure to provide adequate care and supervision of the minors and consented to the court’s jurisdiction.

² According to the report prepared for the jurisdictional hearing, Masharie suffers from bi-polar disorder and agoraphobia and receives SSI benefits for this disability.

³ Masharie had referrals on these two older children in Alameda, Humboldt and Del Norte counties and was in a reunification plan with them in Alameda County in 1995.

before but the blanket . . . had a grotesque smell to it and—it almost made me want to throw up so I had to . . . hand the baby back to the teenager and ask them to please get a baby blanket and a T-shirt on him and I just left a message that they’d have to reschedule something that was planned.”

On February 22, Masharie told a public health nurse that she had no food for the twins. In response, Crystal Markytan, the department’s social worker supervisor, took formula to Masharie. Markytan observed that Masharie’s kitchen was very dirty. She saw raw meat and other uncovered food on the kitchen counter, and there was food and other trash on the kitchen floor. In another part of the house, Markytan saw “one whole back bedroom [] filled with clothes in a giant pile.” The bedroom where the twins slept was very dirty. When Markytan told Masharie that her home was hazardous to the twins’ health, Masharie became angry and belligerent and told Markytan to leave. Markytan replied that she would return in several days to check on the cleanliness of the home. When she did so, Markytan saw that the food had been removed from kitchen counters and garbage picked up from the floor. However, a hatchet remained on the floor near the fireplace, along with matches and lighters in reach of the children.

Social worker Susan Reaves testified that on March 2, 2001, she formalized the voluntary case plan after Masharie’s older son was left waiting at school for two hours before Masharie came to get him. Also, Masharie had missed a school attendance review hearing concerning the two older children. Masharie told Reaves that her mental illness made it difficult for her to get up in the morning and get the children to school. A short time later, a relative took the older children to live in Idaho.

In the report prepared for the jurisdictional hearing, Reaves wrote that Masharie “has a very difficult time organizing the tasks of daily living.” Reaves described the following incident in which she transported Masharie and the twins to an appointment: “Because of the length of time it took [Masharie] on [an earlier] occasion to prepare herself and the twins, this social worker arrived one hour before the appointment time for the food stamp Fair Hearing. [Masharie] had been instructed to have her self and the twins ready to go at 8:00 AM for the 8:30 AM Fair Hearing. Because of the previous

experience, this social worker arrived at [Masharie's] home at 7:30 AM. It was necessary to bang on the door to wake her up. She was asleep on the couch in the living room. When asked what this social worker could do to help she asked to have a pot of coffee made. [Masharie] sat on the couch, smoking and drinking coffee while this social worker sponge bathed and dressed the twins, carried the stroller to the car and prepared formula and a diaper bag for the trip. . . . [Masharie] fried herself a tortilla, combed her hair and dressed, all moving quite slowly so that she barely made it to the appointment for the Fair Hearing which she herself requested. It was very clear that she could not have mobilized to arrive at the appointment on time on her own." Masharie's difficulty in getting herself up and prepared to leave the house was addressed in the case plan, with the department agreeing to transport Masharie and the twins to appointments.

Reaves was also concerned about childcare for the twins, stating "it seemed like there was a steady stream of ne'er-do-wells whenever I was there that were often left with the kids." The case plan required Masharie to leave the twins with "appropriate babysitters and day care providers" and provided that respite care would be available through the department. Additionally, Reaves provided Masharie information regarding childcare providers. Reaves also arranged for social service aide Darcee Taylor to drive Masharie and the twins to Masharie's appointments, obviating the need for childcare.

Darcee Taylor worked with Masharie about six weeks before the twins were removed on April 17. Taylor was initially asked to transport Masharie and the twins to a doctor's appointment after medical providers complained that the children were missing their appointments. Taylor was additionally available for any of Masharie's other transportation needs. However, Masharie cancelled five of seven occasions on which Taylor arranged to drive her to appointments. Masharie told Taylor she was "not awake yet, not ready to go or sick or didn't feel like going that day."

Taylor had been in Masharie's home six or seven times after the two older children left for Idaho, finding it clean only once. She characterized the house as "hazardously messy," filled with garbage, open cans of food in the kitchen and paint and craft supplies on the floor. Masharie told Taylor that her depression prevented her from

“getting up” and cleaning the house. With Taylor’s assistance, Masharie rented a dumpster, filling it with about 60 bags of garbage. Afterwards, Taylor noticed the garbage bags “piling up again,” at the house, but not to the extent she had seen earlier.

On April 17, 2001, Taylor arrived at Masharie’s residence and found the twins in the care of a ten-year old neighbor, Tashina Stowe. No one else was at home. Taylor went back to the department and returned with Susan Reaves. At that time, Tashina’s twelve-year old sister Vanessa came out of the bathroom where she was bathing one of the twins. The twins were detained based on the department’s concern that they could not be safely cared for. Reaves testified that she and Masharie did not discuss babysitting by these girls and that she “would never encourage someone to leave a child with a 10- and a 12-year-old.” According to a medical exam conducted on April 17, the twins suffered from scabies and conjunctivitis. Immunizations for the twins were current.

Masharie testified that on April 17, Tashina and Vanessa Stowe were watching the twins together and that she had confidence in their caretaking abilities. Masharie claimed that Susan Reaves had agreed that Tashina and Vanessa could watch the children. Although Masharie does not have phone service, there is an emergency phone in the house available for 911 calls. Masharie stated there are also nearby adults for the girls to contact in the event of an emergency. As to the twins’ diagnosis of conjunctivitis and scabies on April 17, Masharie testified that the conjunctivitis had started the day before, and that she disagreed with the scabies diagnosis.

Masharie claims that once the department began providing transportation, she made every medical appointment for the twins. She claimed the older children were late for school because of the difficulty of getting them ready while also managing the twins. Masharie explained that she solved the problem by sending the older children to live with a relative in Idaho for the duration of the school year.

As to her mental health, Masharie explained that she has difficulty being in certain public places and sometimes suffers panic attacks. However, she stated this condition does not interfere with her care of the children. She testified that she is currently taking Trazodone for her bi-polar disorder. This medication does not make her tired. Rather her

lack of energy and sleepiness are attributable to the demands of the children. Masharie acknowledged that one of the components of her voluntary plan was to see a psychiatrist. She admitted missing “a couple of appointments,” claiming that on one occasion Darcee Taylor failed to pick her up.

Masharie testified that her home was sometimes messy due to the older children leaving toys and snacks about. She denied Crystal Markytan’s claim of rotten food on the kitchen counter and floors. When asked if she would work on a voluntary services plan if the twins were returned to her, Masharie explained that she was distrustful of the department and felt threatened. She stated, “[I]f it was up to me, no, I would not . . . I would not agree to it unless I had to, yeah.”

Twelve-year old Vanessa Stowe testified that she has watched the twins four or five times. She never babysat alone, and was usually with her thirteen-year old sister Kelly. She stated that Masharie taught her how to perform CPR. At one point on April 17, Santiago vomited on Vanessa’s pants. She went home to change, leaving the twins alone with sister Tashina. Vanessa and Tashina were home from school that day because they had lice. Masharie was not aware of this condition, however.

Florinda Salcido, mother of Tashina and Vanessa, testified that on April 17 she took Masharie to an appointment at the welfare office. Her daughters watched the twins and she gave the girls a phone number where she could be reached. Salcido testified that Vanessa tried to phone her at the welfare department when the social workers arrived at Masharie’s house. When she could not reach her mother, Vanessa became “hysterical” and had someone go to the welfare department to get Masharie and Salcido.

Salcido claimed that her daughters had been asked to babysit the twins only twice. She has never seen Masharie asleep on the couch and not attending to the twins. Salcido described Masharie’s house as cluttered with toys, but not dirty, and has not seen rotting food in the kitchen. Based on Salcido’s observations, the twins have always had enough food to eat. She stated one of the twins had eczema, but neither had scabies.

The court sustained the petition. While not addressing all of the specific allegations, the court made certain findings. It concluded the children were physically at

risk due to lack of proper medical care, as evidenced by their scabies and conjunctivitis, and because of the “deplorable” condition of the home. The court noted that “apparently there’s been some improvements [in the home] before the children were detained.” The court also characterized as unacceptable Masharie’s use of Tashina and Vanessa Stowe to babysit, stating the girls were too young and immature to assume that responsibility. The court noted that the older child left the younger one alone with the twins at one point. It also noted the lack of maturity reflected in the child’s efforts to reach her mother on April 17.

Additionally, the court expressed its concern about the mother’s history of neglect of the older children, stating that “Mom just couldn’t seem to get the job done and, further, what makes it most . . . disconcerting to me is . . . that mom doesn’t seem to recognize in her testimony here that there are problems that put her children at risk. And that they need to be dealt with.” The court stated further that it believed jurisdiction was important in view of “the mother’s express reluctance to cooperate with the Department in meeting the needs of the children unless she was required to do so”

At the dispositional hearing, the court found by clear and convincing evidence that the twins’ physical health and safety would be at substantial risk if they were returned to Masharie, and ordered them placed in their father’s home.

Discussion

I. Jurisdictional Order

We review the court’s jurisdictional findings under the substantial evidence standard. (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.) We may not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or determine where the weight of the evidence lies. Instead, we “accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact. [Citation.]” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.)

Section 300, subdivision (b), allows the juvenile court to exert jurisdiction if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical

harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child, . . . or by the willful or negligent failure of the parent . . . to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent . . . to provide regular care for the child due to the parent's . . . mental illness, developmental disability, or substance abuse.”

Considering all the evidence in the light most favorable to the court's order, we find sufficient evidence of parental neglect and lack of supervision subjecting the twins to risk of serious physical harm or illness.

The evidence supports the court's observation that, left to her own initiative, Masharie cannot accomplish basic tasks necessary to the twins' physical well being. Instead, she is dependent upon the vigilance and intervention of social workers to assure the health and safety of these children. Masharie missed medical appointments for the twins until the department began providing transportation. The testimony of Susan Hurley and Susan Reaves vividly demonstrates the effort required to get Masharie to her appointments on time. While the court noted the improved condition of Masharie's house, the evidence indicates that the department, through its insistence on cleanliness and help in removing 60 bags of garbage, was largely responsible for this circumstance. Masharie argues that there was no evidence that the children suffered any harm. Actual harm to the child is not required. Jurisdiction is appropriate if there is a risk of harm in the future. (§ 300, subd. (b).) The juvenile court could reasonably conclude there was such a risk.

II. Dispositional Order

“Before the court may order a minor physically removed from his or her parent, it must find, by clear and convincing evidence, the minor would be at substantial risk of harm if returned home and there are no reasonable means by which the minor can be protected without removal. (§361, subd. (c)(1).) A removal order is proper if it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor if he or she remains with the parent. [Citation.] The parent need not be dangerous and the minor need not have been actually harmed before removal is

appropriate. The focus of the statute is on averting harm to the child. [Citations.]” (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

At the dispositional hearing, the court referred to its findings made at the jurisdictional hearing, and emphasized the necessity of getting the twins to their medical appointments and providing a clean and safe home. The court again expressed its concern that the twins had been left in the care of 10- and 12-year-old children, and that the older child had been allowed to bathe one of the babies.

Masharie argues that if risks to the children existed earlier, they had been remedied at the time of the dispositional hearing. She points out that the childrens’ rashes had been treated and claims the condition of the house “was no longer an issue.” Masharie contends there was no evidence that Tashina and Vanessa were not properly caring for the twins or that the girls harmed the twins. She also points out that the department never alleged that the twins were malnourished. Additionally, Masharie argues that alternatives to removal existed. She contends that “with rigorous family maintenance services,” the twins could have remained in the home.

There was substantial evidence supporting the court’s conclusion that the twins were at risk of physical harm if they remained in Masharie’s care. As stated in our discussion regarding the jurisdictional findings, the evidence demonstrates that Masharie had not developed an adequate level of care for her children without extensive assistance from the department. The remedial actions noted by Masharie were the result of the department’s efforts. Masharie’s testimony indicates that she perceives no significant problems in her care of the twins and that she attributes the department’s concerns simply to a difference of opinion. On this record, it cannot be said the court erred in removing the twins from Masharie’s custody.

Disposition

The juvenile court orders are affirmed.

Corrigan, J.

We concur:

McGuinness, P.J.

Pollak, J.